

REMARKS

In response to the Office Action dated March 4, 2011, Applicant respectfully requests reconsideration. Claims 1-10, 14, 16, 18-23, and 25-47 were previously pending in this application. By this amendment, Applicant is canceling claims 40-44 without prejudice or disclaimer. Claim 1 is amended. No new claims are added. As a result, claims 1-10, 14, 16, 18-23, 25-39 and 45-47 are pending for examination with claims 1, 16, and 22 being independent. No new matter is added.

Allowable Subject Matter

Claims 22-23, 25-39, and 47 have been allowed. Applicant's understanding is that if the rejection under 35 U.S.C. §101 is overcome, then claims 16, 18-21 and 46 would be allowable since the Office Action does not reject these claims under any other statute.

Interview Summary

The Applicant thanks the Examiner for the courtesy of granting and conducting a telephone interview held May 5, 2011. During the interview, proposed claim amendments were discussed. Specifically, "selecting a network DNA policy action," as recited in amended claim 1 was discussed. Also discussed was the use of the term "DNA" in the claims. The remarks presented herein may serve as further summary of the telephone interview.

Claim Objections

The Office Action objected to claims 1, 16 and 22 because of the use of the abbreviation "DNA" and requires defining the specific phrase to which "DNA" refers. Applicant respectfully disagrees.

MPEP § 2111 states that "pending claims must be given their broadest reasonable interpretation consistent with the specification...[and] be *consistent with the interpretation that those skilled in the art* would reach" (*internal quotation marks removed; emphasis added*). Applicant addressed a similar issue in the response filed May 13, 2008, wherein Applicant stated, "Applicant acknowledges the term DNA is a common acronym for deoxyribonucleic acid, but

believes one of ordinary skill in the art would readily recognize and appreciate the reference is metaphorical in light of the manner in which the term DNA is used frequently in the specification.”

Applicant does not believe that defining the specific phrase would make the claims more clear. In fact, due to the use of DNA in the sense that one skilled in the art of the present application would interpret it, versus one skilled in the biological arts, defining the acronym “DNA” would result in the claims becoming unclear. Therefore, withdrawal of the objection is respectfully requested.

Rejections Under 35 U.S.C. §101

Claims 1-10, 14, 16, 18-21, and 45-46 are rejected under 35 U.S.C. §101 because the claimed invention is directed to nonstatutory subject matter, e.g., covering a transitory signal. These rejections are respectfully traversed.

The Office Action, for a second time, erroneously purports that the aforementioned claims are directed towards a “computer readable medium” (Office Action Dated March 4, 2011, page 3; Office Action Dated October 19th, 2010, page 2). This assertion is incorrect. The claims are all clearly written to specifically recite a “computer-*storage* medium” (emphasis added). In fact, the term “computer readable medium” appears nowhere in the specification of the present application. The present disclosure describes two separate objects: computer storage media and communication media. The transitory signals that the Office Action purports are covered by the broadest interpretation of the phrase “computer readable medium” (a phrase that appears nowhere in either the specification or the claims of the present application) are described in the specification with the term “communication media” (see ¶ 23). Non-transitory devices are described in the specification using the term “computer storage media” (see ¶ 24).

The Office Action cites MPEP § 2111 as the justification for its broad interpretation of “computer-storage medium” covering transitory signals. However, the cited portion of the MPEP specifically states: “pending claims must be given their broadest reasonable interpretation *consistent with the specification*...[and] *be consistent with the interpretation that those skilled in the art would reach*” (*internal quotation marks removed; emphasis added*). Interpreting “computer-storage medium” as covering transitory signals is directly contradictory to the specification. Therefore, this

interpretation is not consistent with the specification. Moreover, one skilled in the art would not reach this interpretation of the claims in light of the description in the specification at ¶ 23.

Claims 1-10, 14, 16, 18-21, and 45-46 are direct to the non-transitory “computer storage media” as described at ¶ 23. Any interpretation of the claims consistent with the specification would not cover transitory signals. For at least the foregoing reasons, claims 1-10, 14, 16, 18-21 and 45-46 are statutory. Applicant respectfully requests withdrawal of the rejections under 35 U.S.C § 101.

Rejections Under 35 U.S.C. §103

The Office Action rejected claims 1, 6-10 and 14 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication No. 2006/0084417 (Melpignano) in view of U.S. Patent Application Publication No. 2002/0178246 (Mayer). These rejections are respectfully traversed.

To further clarify claim 1, amendments were made that are supported in the original disclosure at ¶¶ 65-69. No new matter is added.

1. Deficiencies of Melpignano and Mayer

The rejection of claim 1 over Melpignano and Mayer should be withdrawn because every limitation of claim 1 is not taught by the references. For example, claim 1 recites, “execution of a network DNA policy action of the network DNA policy, the execution of the network DNA policy action configuring network security settings of the computer.” The Office Action asserts that Melpignano discloses this limitation, citing ¶ 35. Applicant respectfully disagrees.

The cited portion (¶ 35) of Melpignano is directed to the network interface selection policy (NISP). The NISPs may take several factors into account when selecting a network interface for a mobile device to use. One of the factors is “security authorizations.” Based on the factors, the software of Melpignano executes a policy that will automatically decide the best network interface to use (¶ 96). In contrast, the limitation of claim 1 recites “execution of a network DNA policy action configuring network security settings of the computer.” Melpignano does not disclose configuring network security settings based on a policy, but instead bases a policy on “security authorizations” and then chooses a network interface to use based on the policy. For at least the

foregoing reason, Melpignano does not teach or suggest “execution of a network DNA policy action of the network DNA policy, the execution of the network DNA policy action configuring network security settings of the computer.” Mayer fails to cure this deficiency.

Therefore, claim 1 patentably distinguishes over Melpignano and Mayer. Accordingly, withdrawal of the rejection of claim 1 is respectfully requested.

Claims 2-10, 14 and 45 depend from claim 1 and are allowable for at least the same reasons.

2. *The Combination of Melpignano and Mayer is Improper*

One of ordinary skill in the art at the time of the invention would not have had a reason to combine the teachings of Mayer with the disclosure of Melpignano. “[T]here must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness” (MPEP § 2143.01.IV). The Office Action, at page 6-7, asserts that one of ordinary skill in the art would have combined the two references “in order to provide a platform analyzer to simulate network configuration model according to the network policy and adds an entry to its final report each time that it detects a violation against the network policy in the network configuration model.” Applicant asserts that this is not a reasoning with rational underpinning to support a conclusion obviousness.

Melpignano is directed to selecting a network interface card to use based on a policy that takes into account various factors. The end result of executing the policy is the selection of a network interface for a mobile device to use (§ 96). In contrast, Mayer is directed to analyzing the configuration of a network and comparing it to a corporate network policy (Abstract). As a result, Mayer generates a report that includes violations of the corporate policy (Id.). These reports are then reviewed by network administrators so that they may take appropriate action (§ 14). Melpignano and Mayer are directed to two different methods with two very different goals. One of ordinary skill in the art would not use reports from a corporate policy checking tool as in Mayer to choose a network interface to use on a mobile device as in Melpignano.

Therefore, the combination of Melpignano and Mayer is improper. Accordingly, withdrawal of the rejection of claim 1, which is based on the combination, is respectfully requested.

Claims 2-10 and 14 depend from claim 1 and are allowable for at least the same reasons.

General Comments on Dependent Claims

Each of the dependent claims depends from a base claim that is believed to be in condition for allowance, and Applicant believes that it is unnecessary at this time to argue the allowability of each of the dependent claims individually. Applicant does not, however, necessarily concur with the interpretation of the dependent claims as set forth in the Office Action, nor does Applicant concur that the basis for the rejection of any of the dependent claims is proper. Therefore, Applicant reserves the right to specifically address the patentability of the dependent claims in the future, if deemed necessary.

CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, the Director is hereby authorized to charge any deficiency or credit any overpayment in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 23/2825, under Docket No. M1103.70234US00 from which the undersigned is authorized to draw.

Dated: 

Respectfully submitted,

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